

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SEAN D. RIES, JOHN R. MURRAY,)
PHILIP C. HENRY, and others)
similarly situated,)

Plaintiffs,)

v.)

ALLMERICA FINANCIAL)
CORPORATION, ALLMERICA)
FINANCIAL LIFE INSURANCE AND)
ANNUITY COMPANY, and)
FREDERICK H. EPPINGER, JR.,)

Defendants.)

Civil Action No. 04-CV-40179

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR COUNSEL FEES PURSUANT TO 28 U.S.C. § 1447**

NOW COME, Plaintiffs, Sean D. Ries, John R. Murray, Philip C. Henry,
and others similarly situated, by and through their undersigned counsel, and files this
Response to Defendants' Memorandum in Opposition to Plaintiffs' Motion For Counsel
Fees.

The Plaintiffs submit the following Response in opposition to the
Defendants' Memorandum in Opposition to Plaintiff's Motion for Counsel Fees Pursuant
to 28 U.S.C. §1447

ARGUMENT

Section 1447 provides no specific timing requirement for the filing of a
motion seeking attorneys fees under said statute. The Local Rules of the District of

Massachusetts also lack a specific timing provision for the filing of such motions. The Defendants argue that the 14 day filing requirement as set forth in Rule 54 (d) (2) (B) of the Federal Rules of Civil Procedure applies to bar the filing of Plaintiffs' Motion for Counsel Fees. This argument lacks merit and is incorrect.

The District Court in M.D.C. Wallcoverings, et al. v. State Bank of Woodstock, et al., 771 F. Supp. 242 (N.D. of Illinois 1991) was confronted with a situation similar to the facts of the case at bar. In the M.D.C. case, the Court granted the Defendant's Motion to Remand on September 10, 1990. On October 9, 1990, thirty (30) days after entry of the order remanding the case to state court, the Defendant filed a Motion for Assessment of Attorneys Fees. Despite filing the Motion more than 14 days after the Remand Order, the District Court granted the Defendant's Motion for Assessment of Attorneys Fees.

Respectfully submitted,

SEAN D. RIES, JOHN R. MURRAY, and
PHILIP C. HENRY
By their attorneys,

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Dated: July 6, 2005